

CHILDREN AND FAMILIES

DIVISION OF YOUTH AND FAMILY SERVICES

Removal of Children in Placement from Resource Family Homes

Readoption with Amendments: N.J.A.C. 10:122E-1 and 2

Proposed: July 7, 2008 at 40 N.J.R. 3935(a).

Adopted: November 17, 2008 by Kimberly S. Ricketts, Commissioner, Department of Children and Families.

Filed: December 2, 2008 as R.2009 d.6, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 30:4C-4(h) and 30:4C-26a.

Effective Dates: December 2, 2008, Readoption
January 5, 2009, Amendments.

Expiration Date: December 2, 2013.

Summary of Public Comments and Agency Responses:

Comments were received from Janet Farrand, Foster and Adoptive Family Services, and Lorraine M. Augostini, Office of Law Guardian, Office of the Public Defender.

COMMENT: Foster and Adoptive Family Services (FAFS) agrees with the readoption with amendments of N.J.A.C. 10:122E-1 and 2. FAFS understands the Division's responsibility to assure that children placed in resource family homes are safe and that the Division must have the authority, along with criteria, to effect the removal of children in placement from resource family homes when necessary.

RESPONSE: The Division thanks FAFS for its support.

COMMENT: N.J.A.C. 10:122E-2.6(c) addresses the issue of notification when a child in placement will be or has been removed from a resource family home. This subsection requires the Division representative to notify the Child Placement Review Board (CPRB), the family court and the child's attorney when there is a change in the child's placement. The language appears to differentiate when notice must be given to the CPRB and the court as compared with notice to the child's attorney. Failure to share critical information with the child's attorney impedes the attorney-client relationship. Rule 5:12-1(b) requires notification to the court and law guardian of the location of the placement of the child. Presumably, N.J.A.C. 10:122E-2.6(c) mirrors this notice requirement. The Office of Law Guardian suggests that this proposed section be amended in the following manner to provide for notice to the CPRB, the family court and the child's law guardian alike when there is a change in the child's placement:

c. The Division representative shall notify the Child Placement Review Board, the family part of the Chancery Division of the Superior Court and the child's Law Guardian, if any, when there is a change in placement of any child in placement known to the court. [The Division representative shall notify the foster child's Law Guardian, if any, when the foster child is removed from a foster home.]

RESPONSE: The Division agrees that there was no intent to differentiate between the timing of notifying the court and the law guardian that a child has been moved from a placement. The Division is adopting the Office of Law Guardian's suggested language in order to clarify that the notice to the court and to the law guardian takes place simultaneously.

Federal Standards Statement

The rules readopted with amendments and expiration of Subchapter 3 do not exceed Federal standards or requirements, and a Federal exceedance analysis is not required for this rulemaking.

Federal law does not specifically address the removal of children from resource family homes. Even so, these rules support the Federal law generally. For example, 42 U.S.C. §671(a)(15)(B) and (C) discuss the safe return of a child to his or her home or the completion of another permanent plan. The removal of a child from his or her resource family home is regulated to accommodate these reasons for removal.

42 U.S.C. §671(a)(20)(A) requires criminal records checks for prospective resource family parents and household members. These rules, N.J.A.C. 10:122E-2.4, address certain situations in which a child must be removed from his or her resource family home when a criminal conviction appears, as well as when Division management and the Department's Office of Licensing may approve continued placement of children in the resource family home, based on the child's safety.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:122E.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletions from proposal indicated in brackets with asterisks *[thus]*:

CHAPTER 122E

REMOVAL OF CHILDREN IN PLACEMENT FROM RESOURCE FAMILY HOMES

SUBCHAPTER 1. GENERAL PROVISIONS

10:122E-1.1 Authority

Pursuant to N.J.S.A. 30:4C-4(h) and 30:4C-26a, the Division of Youth and Family Services, Department of Children and Families, is authorized to establish rules for the removal by the Division of a child in placement from a resource family home. Under the above statute, the Division has the discretionary authority to remove a child in placement from a resource family home at any time with or without the consent of the resource family parent, parent or child in placement.

10:122E-1.2 Purpose

The purpose of this chapter is to describe when it is appropriate for the Division to remove a child in placement from a resource family home. A child in placement may be removed from a resource family home in order to ensure the child's safety, to protect the child from risk of harm, to ensure that the case goal is implemented, and to ensure that the interests of the Division, the child in placement, the parents and the resource family parent are considered.

10:122E-1.3 Scope

The provisions of this chapter shall apply to each child in placement, his or her family, each resource family licensed by the Office of Licensing for the placement of children under the Division's supervision, and the Division.

10:122E-1.4 Definitions

The definitions in N.J.A.C. 10:122B-1.3 and 10:122C-1.3 are hereby incorporated in this chapter by reference.

SUBCHAPTER 2. REMOVING A CHILD IN PLACEMENT FROM THE RESOURCE FAMILY HOME

10:122E-2.1 Removal in emergency situations

(a) The Division representative shall remove a child in placement from a resource family home when the Division determines that the child is not safe in the resource family home.

(b) When abuse or neglect of any child in a resource family home is substantiated, the office manager may consult with:

1. The Institutional Abuse Investigation Unit of the Department or the Office of the Public Defender acting as the Division's agent in conflict matters, when that unit conducted the child abuse and neglect investigation; and
2. The Office of Licensing to determine if the resource family home license will be denied, suspended, or revoked, if the Office of Licensing shall refuse to renew the license, or if the Office of Licensing shall permit the home to be licensed for the placement or continued placement of the children already in placement or recommended for placement in the home in accordance with N.J.A.C. 10:122C-5.5(b).

(c) When abuse or neglect of any child in a resource family home is substantiated, the office manager shall determine if each child in placement is safe in the resource family home and then:

1. Determine whether to remove any child in placement in the resource family home and, if necessary, direct a Division representative to remove the child; or
2. Recommend to the Area Director that a child in placement continue to be placed in the resource family home, based upon the considerations set forth in N.J.A.C. 10:122E-2.5(a).

(d) The Area Director decides whether or not to remove the child in placement from the resource family home, based on the considerations in N.J.A.C. 10:122E-2.5(a), when child abuse or neglect of any child is substantiated in a resource family home. When the Area Director determines that it is in the child's interest to keep the child in the resource family home, the Area Director shall:

1. Determine that each condition listed in N.J.A.C. 10:122C-5.5(b) has been met; and
2. Determine if the Office of Licensing has given approval, in accordance with N.J.A.C. 10:122C-5.5(b)5.

(e) A resource family parent may request an emergency removal of a child in placement and the Division representative shall remove the child in placement when:

1. The child in placement is at risk of harm if he or she remains in the resource family home; or
2. The resource family is at risk of harm if the child remains in the resource family home.

(f) A resource family parent may request an emergency removal of a child in placement when the resource family is experiencing a personal emergency and is unable to make alternate appropriate plans for the child. The Division representative shall respond promptly and shall remove the child in placement when necessary.

(g) A child in placement may request emergency removal from his or her resource family home and the Division representative shall remove the child in placement when the child is not safe in the resource family home.

(h) In all emergency cases, the Division representative shall document in the child's electronic case record and the resource family home record, the decision to remove or not remove the child and shall inform the resource family parent, the child in placement, the parents and other interested parties of the outcome.

10:122E-2.2 Removal in non-emergency situations

(a) The Division representative may remove a child in placement from a resource family home for any of the following reasons:

1. The child's case goal is furthered or achieved by the move or a court order is being followed, for example, return to family, placement in an adoptive home or uniting a child in placement with siblings.
2. The child has a need, which cannot be met by the current resource family.
3. There is documented evidence that the resource family engages in behavior, which is detrimental to any child in placement in that resource family home.

4. There is documented evidence that the resource family disagrees with the approved case plan and repeatedly fails to cooperate with the Division or to make the child in placement available for visits or services, which are part of the approved case plan, despite the Division representative's attempts to involve the resource family in remediating the situation.

5. The resource family has a pattern of violating any Division rules, which may have a negative impact on any child in placement, despite attempts by the Division representative to ensure compliance.

(b) A resource family parent may request that a child in placement be removed, giving the Division representative 15 days notice to make suitable alternate arrangements. The resource family parent shall state the reason for the request.

(c) A child in placement may request to be removed from a resource family home. The child shall state the reason for the request.

(d) The parent of a child in placement may request that the child be removed from the resource family home. The parent shall state the reason for the request.

10:122E-2.3 Procedures prior to a non-emergency removal

(a) Prior to a non-emergency removal, the Division representative shall interview the child in placement, the resource family parent, and any appropriate collateral contacts, including the parent, to determine:

1. Information from the child in placement about any problems with the placement and his or her preferences;

2. Information from the resource family parent about any problems with the placement and his or her preferences;

3.-4. (No change.)

(b) The Division representative shall inform the child in placement, the resource family parent, the parent, and any appropriate contacts at least 30 days prior to the move when the child will be removed to further or achieve the case goal or as soon as possible when a court order is being followed.

(c) The Division representative shall inform the parent of the need to change placements, if he or she is available.

(d) The Division representative shall remove the child in placement within 15 days of the resource family parent's request.

(e) When the child or parent has requested removal, the Division representative shall discuss the request with supervisory staff. The Division representatives shall make the decision within five days of the request. The Division representative shall inform the child in placement or parent of the decision and shall remove the child in placement within 15 days of the original request when it is determined that removal will occur.

(f) A Division representative shall document in the child's electronic case record and the resource family home record the decision to remove or not remove the child in placement, including the reasons.

10:122E-2.4 Removal due to criminal conviction

(a) The Division representative shall remove the children in placement from the resource family home when any resource family parent or household member has been convicted of a crime listed in N.J.S.A. 30:4C-26.8 in the following circumstances:

1. The resource family home has been licensed as being in substantial compliance and a Federal criminal history check is returned to the Division with a conviction of a crime cited in (a) above;

2. A new resource family parent or household member moves into an already licensed resource family home with a conviction of a crime as cited in (a) above; or

3. Any licensed resource family parent or household member who has had a completed criminal history check, has been subsequently convicted of a crime cited in (a) above, pursuant to N.J.S.A. 30:4C-27.8b.

(b) The office manager shall determine whether or not to remove the children in placement from a licensed resource family home when:

1. Any licensed resource family parent or household member has been convicted of a non-violent criminal or disorderly persons offense;

2. Any licensed resource family parent or household member has been convicted of a violent criminal or disorderly persons offense involving crimes not cited in N.J.S.A. 30:4C-26.8; or

3. Any licensed resource family parent or household member was convicted of one of the crimes cited in N.J.S.A. 30:4C-26.8, and five or more years have passed since he or she was terminated from probation or parole or was released without probation or parole from a correctional facility.

(c) Under the circumstances in (b)1 above, if the office manager decides it is not in the child's best interest to be removed from this resource family home, the office manager shall recommend to the Office of Licensing that the child be permitted to continue to be placed in the resource family home.

(d) Under the circumstances in (b)2 and 3 above, if the office manager decides it is not in the child's best interest to be removed from this resource family home, the office manager shall recommend to the Area Director, who may recommend to the Office of Licensing, that the child be permitted to continue to be placed in the resource family home.

(e) The determination made by the office manager in (b), (c) and (d) above, and the Area Director in (d) above shall be based upon the criteria listed in N.J.A.C. 10:122E-2.5(a).

(f) The decision made by the Office of Licensing in (c) and (d) above, to approve or deny the child's placement in the resource family home, shall be made on a case-by-case basis, based upon the criteria listed in N.J.A.C. 10:122C-2.2(b)3.

10:122E-2.5 Considerations in deciding whether or not to remove

(a) The Division representative shall consider the following points when deciding whether to remove a child in placement, in emergency and non-emergency situations:

1. The age of the child in placement;
2. The length of stay in this resource family home;
3. The relationship between the child in placement and the resource family;
4. The number and impact of prior moves on the child in placement;
5. The child's adjustment to the extended family and community;
6. The child's expressed wishes;
7. The resource family's history with the Division and of successful parenting;
8. (No change.)

9. The willingness of the resource family and the child in placement to work to overcome problems;
10. The child's injuries for which neither the resource family nor the child in placement can offer a reasonable explanation;
11. The resource family's cooperation or lack of cooperation with any child abuse and neglect investigation;
12. (No change.)
13. The child's immediate safety;
14. The child's risk of future harm; and
15. The location of the child's siblings and the ability to keep them together or reunite them or facilitate visits.

(b) A child in placement may be removed temporarily from a resource family home before or during a child abuse or neglect investigation for the child's safety and protection. If the Division representative makes a finding of unfounded (as defined in N.J.A.C. 10:129-1.3), the Division representative shall use the criteria listed in (a) above to determine whether the child who has been removed will be returned to the resource family home.

10:122E-2.6 Notification

(a) The Division representative shall notify each parent who retains legal rights to the child and any relative who visits, when the child in placement will be removed or has been removed in an emergency. The Division representative shall also inform the child's parents as soon as possible after the child is placed.

(b) The Division representative shall notify the Deputy Attorney General responsible for the case when a child in placement will be removed or has been removed in an emergency when:

1. The child in placement is the subject of a case in litigation; or
2. Commencement of guardianship litigation for the child in placement is imminent.

(c) The Division representative shall notify the Child Placement Review Board *,* *[and]* the family part of the Chancery Division of the Superior Court *, and the child's Law Guardian, if any* when there is a change in placement of any child in placement known to the court. *[The Division representative shall notify the child's Law Guardian, if any, when the child in placement is removed from a resource family home.]*

(d) The Division representative who removes the child in placement shall notify each other Division representative who supervises a child in placement in the resource family home and the Resource Family Support Unit that supervises the resource family home about the removal.

(e) The Division representative shall inform the resource family parent immediately of the removal and the reasons for removal if the child in placement was not removed directly from his or her physical care. If there is a difference of opinion between the resource family parent and the Division representative regarding the removal, the Division representative shall inform the resource family parent in writing of the reasons for the decision, whether the resource family parent may have the right to appeal, and that to appeal the removal, the procedures in N.J.A.C. 10:120A shall be followed.

10:122E-2.7 Disagreements

The Division representative, the child in placement and the resource family shall try to resolve any disagreement before the child is removed, unless an emergency removal is necessary.